

PT 98-95

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

BROMENN FOUNDATION)		
Applicant)		
)	COURT #	97 MR 85
v.)		
)	Docket #	95-57-66
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)	Parcel Index #	14-33-131-007

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. William B. Lawrence appeared on behalf of BroMenn Foundation.

Synopsis:

Docket No. 94-57-38 concerned McLean County Parcel Index No. 14-33-128-013 which is improved with the BroMenn thrift shop (hereinafter referred to as the "Thrift Shop"). Docket No. 95-57-66 concerned McLean County Parcel Index No. 14-33-131-007 which is the parking lot for the thrift shop (hereinafter referred to as the "Parking Lot"). These two Docket Numbers were consolidated for hearing. This consolidated hearing was held before the Illinois Department of Revenue (hereinafter referred to as the "Department") on May 30, 1996.

THE DEPARTMENT'S DECISION IN THAT CONSOLIDATED HEARING WAS ISSUED ON JUNE 11, 1997. THAT DECISION EXEMPTED THE THRIFT SHOP AND DENIED THE EXEMPTION OF THE

PARKING LOT. THE FOUNDATION THEN SOUGHT ADMINISTRATIVE REVIEW OF THE DEPARTMENT'S DENIAL OF EXEMPTION OF THE PARKING LOT. ON FEBRUARY 26, 1998, THE CIRCUIT COURT OF MCLEAN COUNTY IN CASE NO. 97 MR 85 ISSUED AN ORDER REMANDING THE CASE TO THE DEPARTMENT. AT THE REMAND HEARING, THE DEPARTMENT WAS TO DETERMINE; 1) THE EXTENT OF THE USE OF SAID PARKING LOT BY THE THRIFT SHOP; AND 2) THE EXTENT OF USE OF SAID PARKING LOT BY OTHERS.

THE REMAND HEARING WAS HELD ON JULY 22, 1998. MR. LEON SCHMUCKER, THE RETIRED FORMER VICE PRESIDENT OF BROMENN FOUNDATION (HEREINAFTER REFERRED TO AS THE FOUNDATION); MS. DORIS RUBLE, A PART TIME EMPLOYEE OF THE THRIFT SHOP; AND MRS. JOYCE SCHMUCKER, PRESIDENT OF THE BROMENN SERVICE AUXILIARY, (HEREINAFTER REFERRED TO AS THE AUXILIARY) WERE PRESENT AND TESTIFIED ON BEHALF OF THE FOUNDATION AT THE REMAND HEARING IN THIS MATTER.

The issue in this matter is whether the Foundation presented sufficient evidence that the primary use of this parcel during 1995 was as a parking lot for the thrift shop.

Following the submission of all of the evidence and a review of the record, it is determined that the Foundation failed to establish that this parcel was primarily used as a parking lot for the thrift shop during 1995.

It is therefore recommended that McLean County Parcel No. 14-33-131-007 remain on the tax rolls and be assessed to the Foundation, the owner thereof, for the 1995 assessment year.

Findings of Fact:

1. The Foundation acquired parcel No. 14-33-131-007 by a warranty deed dated October 25, 1994. (Dept. Ex. No. 2F)
2. At the first hearing held on May 30, 1996, Ms. Elise Johnson, manager of the thrift shop, was present and testified that thrift shop customers, before the parking lot was acquired,

had been parking at Etchison Pool and Spa, (hereinafter referred to as “Etchison”) which is located next door to the north of the thrift shop. After the Foundation acquired the parking lot, the Foundation allowed Etchison customers to park on this parking lot because of the prior encroachment of the thrift shop customers on the Etchison parking lot. The parking lot at issue is directly East across Main Street from Etchison. (Dept. Ex. No. 2C p. 54)

3. At the hearing on remand held on July 22, 1998, Ms. Elsie Johnson was not present. She had testified at the hearing on May 30, 1996, concerning the use of this parking lot parcel. Since she was not present, she could not be called upon to clarify her prior testimony.

4. The parking lot here in issue was acquired by the Foundation and immediately put into use as a parking lot. (Tr. p. 16)

5. A review of the aerial Sidwell map in evidence in this case shows that the thrift shop is located on a triangular shaped parcel located on the West side of Main Street. Directly North of the thrift shop is Etchison. The parking lot here in issue is located directly East across Main Street from Etchison. (Dept. Ex. 2-0)

6. The parking lot is bound on the West by Main Street and on the South by Harris Street. There are houses both to the North and East of the parking lot. (Dept. Ex. No. 2-O)

7. The surface of the parking lot during 1995 consisted of deteriorating blacktop. (Tr. p. 16)

8. During 1995, there was no fence on the boundaries of the parking lot to regulate ingress and egress to the lot. Access to the lot could be gained from either Main Street or Harris Street. During 1995, there were no persons employed to regulate traffic or parking on the lot. (Tr. p. 17)

9. One of the witnesses at the hearing on July 22, 1998, verified that there was an oral agreement that customers of Etchison could use the thrift shop parking lot. This agreement was as a result of the complaints by Etchison concerning thrift shop customers parking on Etchison's lot. (Tr. pp. 22-24)

10. During the 1995 assessment year, there was a sign on the parking lot which stated "Parking for the Thrift Shop and Etchison Pool and Spa". (Tr. p. 31)

11. The parking lot will hold about 80 cars. (Tr. p. 30)

12. During 1995, the witnesses for the Foundation testified that 12 to 15 cars would be parked at any one time along the West side of the parking lot across from Etchison. (Tr. p. 20)

13. When asked if any of the customers of Etchison ever parked along the West side of the lot one of the Foundations witnesses stated that they didn't know. (Tr. p. 25)

14. There was testimony in the record that during the 1995 assessment year it had been observed that cars parked along the North boundary of the parking lot near the houses that were located North of this parcel. There was also testimony that during 1995 there were times when there were cars parked along the East boundary of the parking lot near the houses located to the East of the lot. (Tr. pp. 17-20)

15. There also several homes North of Etchison on the West side of Main Street in which businesses are operated. (Tr. p. 28)

16. To the South of Harris Street across from the parking lot is located the Marathon gas station. During the 1995 assessment year, the witnesses for the Foundation testified that they had observed cars parked on the South edge of the parking lot directly across from the Marathon gas station. (Tr. pp. 19 & 20)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

35 ILCS 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;

(b) beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property;

35 ILCS 200/15-125 exempts certain property from taxation as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v.

University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

It is clear from the foregoing citations that the burden of proof is on the Foundation in this proceeding to establish that during the 1995 assessment year the use of the parking lot in question met the requirements of the constitution and the statutes. From a review of the testimony at the hearing on May 30, 1996, and also the hearing on July 22, 1998, it is clear that as a result of prior abuse of the parking facilities around Etchison by the customers of the thrift shop, that the Foundation placed a sign on this lot inviting use of the parking lot by Etchison as well as the thrift shop.

There also is testimony in the transcript of the first hearing which is incorporated in this remand record that the lot was in fact used by customers of Etchison. In addition, there is testimony concerning use of the parking lot by persons visiting the houses to the North and East of the parking lot as well as by customers of the Marathon gas station. It was admitted at the hearing on July 22, 1998, that this lot, although located in a commercial area, was neither fenced nor policed. Consequently the Foundation, as a result of these admissions, failed to establish that this parking lot was primarily used for a statutorily enumerated exempt purpose.

WHERE AS HERE, THE PROPERTY AS A WHOLE WAS USED FOR BOTH EXEMPT AND NONEXEMPT PURPOSES, IT WILL QUALIFY FOR EXEMPTION ONLY IF THE EXEMPT USE IS THE PRIMARY USE, AND THE NONEXEMPT USE IS MERELY INCIDENTAL. ILLINOIS INSTITUTE OF TECHNOLOGY V. SKINNER, 49 ILL.2D 59 (1971) AND ALSO MACMURRAY COLLEGE V. WRIGHT, 38 ILL.2D 272 (1967).

IT SHOULD ALSO BE POINTED OUT THAT THIS PARKING LOT HAS A CAPACITY OF MORE THAN EIGHTY VEHICLES. DURING 1995, THE TOTAL NUMBER OF VEHICLES ON THIS LOT AT

ANY TIME DID NOT EXCEED 15 TO 18. IN THE CASE OF PEOPLE EX REL. PEARSALL V. THE CATHOLIC BISHOP OF CHICAGO, 311 ILL. 11 (1924), THE ILLINOIS SUPREME COURT HELD THAT THE MERE FACT THAT A PROPERTY WAS INTENDED TO BE USED FOR AN EXEMPT PURPOSE WAS NOT SUFFICIENT TO EXEMPT SAID PROPERTY. THE COURT REQUIRED THAT THE ACTUAL PRIMARY EXEMPT USE MUST HAVE BEGUN FOR THE PROPERTY TO BE EXEMPT. IN THE CASE OF ANTIOCH MISSIONARY BAPTIST CHURCH V. ROSEWELL, 119 ILL.APP.3D 981 (1983), THE COURT HELD THAT PROPERTY WHICH WAS VACANT AND NOT USED DID NOT QUALIFY FOR THE STATUTORY EXEMPTION AS PROPERTY USED EXCLUSIVELY FOR RELIGIOUS PURPOSES REGARDLESS OF THE OWNER'S INTENT.

I therefore conclude that the Foundation has failed to sustain the burden of proof that the primary use of this parcel was for parking for the exempt thrift shop, during 1995.

I consequently recommend that McLean County Parcel Index No. 14-33-131-007 remain on the tax rolls for the 1995 assessment year and be assessed to BroMenn Foundation, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
December 15, 1998